

U. Perry



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Coyote Corporation

File: B-238582

Date: April 25, 1990

Robert W. Tate, Esq., for the protester.
Justin P. Patterson, Esq., Department of the Interior, for the agency.
Anne B. Perry, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where invitation for bids requires that the contract price include all applicable taxes, the responsibility for determining the applicability of Navajo tribal tax to a construction project located outside of the Navajo reservation is that of potential offerors.
2. To the extent that protester's disagreement with the Navajo tribe's assertion of its taxing authority constitutes a dispute between private parties, it is not for resolution under the General Accounting Office bid protest jurisdiction.

DECISION

Coyote Corporation protests the terms of the solicitation which place the burden on offerors for determining the applicability of the Navajo Indian Nation's tax under invitation for bids (IFB) No. 0150-90-4 issued by the Bureau of Indian Affairs (BIA), Department of the Interior, for the remodeling and repairing of buildings No. 413 and 414 at the Mariano Lake Boarding School in Mariano Lake, New Mexico. Coyote contends that the BIA has improperly deferred to the Navajo tribe in the tribe's assertion of taxing jurisdiction over this project which is located entirely on federal land managed by the BIA.

We deny the protest.

The solicitation requires that the contract price include all applicable federal, state and local taxes, and states

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that the sole responsibility for determining such taxes rests with the contractor. The IFB also contains a special notice to all bidders that states the following:

"Bidders are responsible for contacting the tribe or tribal organizations involved with regard to their resolutions regarding tribal taxes, requirements and/or other applicable tribal laws. Bidders are required to submit with their bid package the contractor's tribal compliance statement."

Coyote states that the Navajo Indian tribe has declared that the above-referenced project is subject to a tribal tax, a position with which the protester disagrees because the site of the work to be performed is outside of the reservation, on federally-owned land. The protester argues that the special relationship between the BIA and the Indian Nation mandates that the BIA prohibit the Navajo tribe from assessing this tax on contractors performing federal work on non-reservation lands, and that the BIA's deference to the Navajo tribe in this regard is improper. Coyote argues that the Navajo tribe's assertion of its taxing authority, coupled with the protester's belief that no such tax may be assessed, creates a situation of uncertainty wherein bidders must speculate on the obligation to pay these tribal taxes, which renders it difficult to submit the correct bid amount. The protester argues that, at a minimum, there is an obligation on the part of the BIA to clarify this tax question so that all bidders can bid with certainty, without resort to questionable tax claims of the Navajo tribe.

Unless otherwise specified in a solicitation, the inclusion of the standard tax clause that requires the contract price to include all applicable taxes constitutes notice to all offerors that offers will be evaluated on a tax-included basis, and places the burden on the offeror to ascertain whether, and to what extent any taxes apply, and to include the appropriate amount in its price. The Bruce Corp., B-231171, June 24, 1988, 88-1 CPD ¶ 610. Nearly all of the states and numerous localities impose taxes, and the applicability of state and local taxes varies among the states and from one locality to another and, therefore, the burden is placed on offerors because they generally are more familiar with the application of state and local taxes than is the contracting officer. Tumpane Servs. Corp., B-220465, Jan. 28, 1986, 86-1 CPD ¶ 95. Additionally, contracting agencies generally are not sufficiently familiar with the bidders' operations to arrive at definite conclusions concerning the applicability of taxes to the contract, and it would be inappropriate to impose on them the burden of

examining the tax situation of each bidder who may elect to submit a bid. J&W Welding and Fabrication, B-209430, Jan. 25, 1983, 83-1 CPD ¶ 92. The purpose of soliciting bids on a tax-included basis is to limit the government's payment obligation to the price offered--the contractor cannot claim at a later date that the government should reimburse the firm for any taxes that the firm ultimately has to pay which allegedly were not contemplated when the bid was submitted. Tumpane Servs. Corp., B-220465, supra.

Here, Coyote objects to the BIA's deferment of the question of the applicability of the Navajo taxes to the contractors, and argues that in view of the special relationship between the BIA and the Indian Nation, the contracting agency should prohibit the Navajo tribe from taxing this project and so advise offerors in the solicitation. We disagree. First, as indicated above, the burden of determining tax liability is clearly that of the offeror, despite any uncertainty of such liability. Moreover, we are not aware of any statute or regulation which requires the BIA to resolve tax disputes between the Indian Nation and private parties such as the protester. We note that although Coyote disputes the authority of the Navajo tribe to tax projects performed outside of its reservation, and is therefore uncertain as to whether such a tax will be paid, risk is inherent in most contracts and offerors are expected to allow for that risk in computing their offers. Tumpane Servs. Corp., B-220465, supra. To the extent the protest concerns a private party's dispute with the Navajo tribe's assertion of its authority to tax this project, it is not for resolution under the General Accounting Office's bid protest jurisdiction. See Gallegos Research Group, B-227037, May 8, 1987, 87-1 CPD ¶ 496.

The protest is denied.

James F. Hinchman
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